89-824

Supreme Court, U.S.
FILED
NOV 21 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

JOHN GAGLIARDI and
JULIUS JONES

Petitioners

vs.

DUQUESNE LIGHT COMPANY,
MARTIN GOLDHABER,
EUGENE COON, ARMAND ZITELLI,
ROBERT CHEREP, STEPHEN PIOTROWSKI
and JOHN LEE

Respondents

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**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

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53pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the District Court err in dismissing the complaint as to the defendant, John Lee?

ANSWER: YES.

2. Did the Courts below err in refusing to order the return of the Plaintiffs' property?

ANSWER: YES.

3. Did the UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA err in dismissing this entire action?

ANSWER: YES.

4. Did the Courts below err in opening the defaults as to the defendants Coon and Cherep and in later refusing to reinstate those defaults?

ANSWER: YES.

PARTIES TO THE PROCEEDING

The names of all the parties to this proceeding are listed in the caption. Their identities will be summarized in the concise statement of the case.

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REFERENCE TO REPORTS

To the best knowledge, information, and belief of the Petitioners herein, the opinions and decisions of the Courts below have not been reported in any reporters, officially or unofficially.

CONCISE STATEMENT OF GROUNDS FOR INVOKING JURISDICTION OF THE SUPREME COURT

a. The judgment sought to be reviewed is the Judgment Order of the United States Court of Appeals for the Third Circuit affirming the dismissal with prejudice of the complaint filed in this case by the UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA. The date of said judgment order was July 25, 1989.

b. Rehearing in banc was requested by the Petitioners in the United States Court of Appeals for the Third Circuit. The Petition for rehearing en banc was

denied by said Court of Appeals by Order dated August 24, 1989. No extension of time for the filing of this petition for a writ of certiorari has been applied for or granted.

c. No cross petition has been filed in this case, to the best knowledge, information, and belief of the petitioners herein.

d. The statutory and/or constitutional provision which, in the opinion of the Petitioners, is believed to confer jurisdiction for review in the Supreme Court of the United States is Article III of the Constitution of the United States of America and 28 USC

§1254(1).

TEXT OF STATUTORY PROVISION:

28 USC 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress. For the purposes of this section, an Act of Congress of application

exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

The plaintiffs and Petitioners in this action are John Gagliardi and Julius Jones, who are two individual private citizens having residences in Clairton, Allegheny County, Pennsylvania. Gagliardi and jones also have offices for the conduct of their personal business in a place known as the USI industrial park, located at 191 Wall Road, Clairton, Jefferson Borough, Allegheny County, Pennsylvania 15025. The industrial park offices of Gagliardi and jones are located in the same complex as the property of U.S. Industrial Fabricators, Inc, a Pennsylvania corporation with which the industrial park complex is located.

The defendants in this case are Duquesne Light Company, a Pennsylvania corporation operating a sanctioned electrical power monopoly in Allegheny County and Beaver County, Pennsylvania, and an organization dedicated to the systematic plunder of the people and businesses of the Western Pennsylvania area; Martin Goldhaber, an attorney having an office in the City of Pittsburgh and who accepts employment from the defendant Duquesne Light Co for the purpose of collection of debts through plunder and intimidation and force; Eugene Coon, the Sheriff of the County of Allegheny, Pennsylvania, a public officeholder who serves writs, executions from the State Court, and

generally enforces orders of the Court of Common Pleas of Allegheny County, Pennsylvania; Armand Zitelli is an employee of the defendant Duquesne Light Company personally involved in the execution and orchestration of its crimes; Robert Cherep, an Allegheny County, Pennsylvania Deputy Sheriff, who in this case acted as the "Strong Arm" muscle for the defendant Duquesne using the Allegheny County Sheriff's Office as an instrumentality for the denial of the civil rights of Jones and Gagliardi; Stephen Piotrosky is the credit officer of the Duquesne Light Company who was told to collect an account owed by the U.S. Industrial Fabricators, Inc. Defendant Piotrosky

then proceeded to attempt to please his masters without regard to the damage done by him and his employer and superiors to the innocent plaintiffs or to others; John Lee is a defendant who has all the reason in the world to be a defendant in this case because as a staff attorney employed by the defendant Duquesne Light Co. he has attempted to perpetuate injustice and in this and other cases has sought to promote injustice by, inter alia, making false statements to the Court of Common Pleas of Allegheny County, Pennsylvania, and by ordering co defendant Piotrowski to sign affidavits to false pleadings, essentially the subornation of false swearing.

Gagliardi, in turn acting pro se filed a "Third Party Ninth Amendment Complaint at Law," naming respondents as defendants. The allegations of the third party complaint were set forth in relevant part in Certiorari # 89-653, as follows:

> 11. Third Party Defendant, Duquesne Light Company, because of ongoing litigation with Third Party Plaintiff, Gagliardi, did cause the Sheriff's Dept. of Allegheny County to enter the business premises of Gagliardi, and they did remove certain file cabinets with contents, (paperwork and documentation) being held in the care and custody of Gagliardi for Plaintiff, Jones. The whereabouts of these documents, etc. are unknown to Gagliardi, and their location is secret and secrecy is secured by a Preliminary Injunction dated

22nd day of October, 1987, signed by Judge I. Wekselman, restraining Gagliardi from speaking with anyone to determine the whereabouts. (Exhibit H at 87-18359.

15. That Third Party Defendants, Sheriffs Department of Allegheny County, Sheriff, Eugene Coon and Deputy Sheriff, Robert Cherep, did enter the premises of defendant Gagliardi, and did remove certain filing cabinets containing documents and other possessions belonging to Plaintiff, Jones. Despite argument and objection by Gagliardi, these items were removed on behalf of the Duquesne Light Company, and there whereabouts are unknown to this date because of the reasons previously stated regarding Judge Wekselman.

16. That Third Party Defendant, Judge Donald Ziegler, of the U.S. District Court for the Western District, did by Order of Court dated the 30th day of October, 1986 dismiss and close all cases pending by an ORDER of Civil

Action 86-1998 (which was John Gagliardi v. Ted McWilliams, et al.), among these cases was 86-2293 which was Julius Jones, John Gagliardi vs. Robert A. Doyle, et al, which had just been filed the 29th day of October, 1986. How could Ziegler, (J) read the complaint the same day, and determine that "the instant case be and hereby is dismissed for failure to state a cause of action recognized under Federal Law, Federal R. Civ. P. 12(b)(6); IT IS FURTHER ORDERED that the Clerk of Courts for the United States District Court for the Western District of Pennsylvania be and hereby is enjoined from filing or causing to be filed any complaint or other paper from John Gagliardi or any known associate of John Gagliardi without first forwarding said paper to this court and obtaining approval from the undersigned." (Exhibit L). This complaint 86-2293 had been filed Pro Per by Julius Jones and John Gagliardi, as co-Plaintiff.

U.S. Industrial Fabricators, Inc, a Pennsylvania Corporation which is not a party to the instant case, has had an ongoing dispute with the defendant Duquesne for a period of approximately twelve years, involving a trespass of the defendant Duquesne for which said defendant refused to pay. As a result of the refusal to pay, U.S. Industrial Fabricators, Inc. decided to take a setoff by not making payments on its bill from the defendant Duquesne for electrical services. Subsequently, both corporations sued each other in the Court of Common Pleas of Allegheny County, Pennsylvania for monies allegedly due. The Duquesne Light Company first obtained a judgment

against the U.S. Industrial Fabricators, Inc. for the past due electric service. The suit of U.S. Industrial Fabricators, Inc. against Duquesne Light Co was resolved later in a judgment against Duquesne Light based on a jury verdict in the sum of $24,000.00. Duquesne Light obtained the services of Goldhaber, a collection attorney in the City of Pittsburgh, for the purpose of collecting its judgment against U.S. Industrial Fabricators, Inc. Goldhaber then caused a writ of execution to be issued out of the Court of Common Pleas of Allegheny County, Pennsylvania for the amount of money in question. The Petitioners herein, John Gagliardi, and Julius Jones, were not

and are not defendants in the action brought by Duquesne Light against U.S. Industrial Fabricators, Inc.

Pursuant to the writ of execution which Goldhaber caused to be issued, on October 7, 1987, defendant Cherep, an Allegheny County Deputy Sheriff acting as an armed gunman for the Duquesne Light Company, and in the company of Goldhaber and others, including an unknown locksmith, burst into the office of Gagliardi and Jones at 191 Wall Road, Clairton, Jefferson Borough. Gagliardi and several friends and associates were in the room at the time. Cherep exclaimed at that time "You people are all in trouble now! Duquesne Light Co. is taking over!"

Following this incredible imposition, Cherep then proceeded to order all the occupants of the office out and to have the locksmith who was in the room padlock the office. This was accomplished in front of witnesses who attempted to explain to the deputy that the office which he had broken into was not the office of U.S. Industrial Fabricators, Inc. but rather the office of Gagliardi and Jones. Cherep and Goldhaber were more interested in acting like animals and using brute force than they were in justice, so the reasonable pleas of Gagliardi, Jones, and their friends were ignored and these private individuals were evicted from their office for the debt of some

other company! Some time later, Cherep "sold" all the property of Gagliardi and Jones to Duquesne Light Co which caused all these items to be hauled away in a truck to an unknown location. The materials removed were office equipment, furniture, and the private papers and records of both John Gagliardi and Julius Jones.

This invasion of the private offices of Gagliardi and Jones, together with the fact that the defendants were repeatedly warned that the offices concerned were the private offices of those two individuals, and that the property therein was the private property of the individuals, as well as their personal, private

records, and the fact that these warnings were repeatedly disregarded, led to the eventual filing of the complaint in the UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA which is the subject of this Petition for a writ of certiorari. The original complaint led promptly to the filing of an amended complaint, because of additional aspects of wrongdoing on the part of defendants associated with the defendant Duquesne Light Co, particularly John Lee. The amended complaint added claims for violations of the rights of John Gagliardi by Duquesne Light Co acting through its attorney John Lee, in which John Lee had obtained an ex parte

injunction against Gagliardi preventing Gagliardi from making or attempting to make contact with the offices or officers of Duquesne Light Co. This injunction was obtained based on false allegations of harassment by Gagliardi against the power company. Plaintiffs have been forced to file this complaint as pro se litigants as a result of the fact that the bar has for the most part made itself unavailable to injured individuals in civil rights litigation, either by pricing itself out of the running or otherwise. Most licensed attorneys with any degree of sophistication are already aware that the court system in this country today is oriented to protection of the system

and the subordination of the rights of individuals to the interests of the system in those frequent cases where they conflict, even though the Federal Courts were clearly intended by the framers of the system to be the ultimate protection available to the citizen against the machinations of government gone mad.

After the complaint was filed and served, and the amended complaint was filed, the defendants associated with the Duquesne Light Company appeared through counsel, filing motions to dismiss pursuant to FRCP 12(b). Defendants Coon and Cherep filed no appearance and took no action. The plaintiffs then caused default to be

entered against the defendants Coon and Cherep for failure to plead or otherwise defend by filing the appropriate request to the clerk for entry of default. This case was at the time assigned to Judge Donald Ziegler of the District Court. Defaults were entered by the Clerk of the Court on December 7, 1987. According to the docket sheets, a proposed order for the lifting of the defaults was received by the Clerk the following day, and the next following day the Court, through Judge Donald Ziegler, lifted the defaults as to defendants Coon and Cherep. Shortly thereafter, on December 21, 1987, Judge Ziegler recused himself from this case and from any other cases

in which John Gagliardi was a party. Considering the time frame involved here, it is apparent that the order from the clerk could not have reached the office of the Sheriff notifying it of the entry of the default fast enough for the "Order to lift Default" to have reached the court at the time it did. Gagliardi was able to confirm this in a discussion with the Clerk's Office. The official copy mailed from the clerk's office to the Sheriff did not even leave the court house until the following day! Gagliardi was then told by Judge Ziegler's clerk that he had called the Office of the Sheriff immediately on learning of the default and suggested that the Judge would lift

the default but that an order would have to be submitted. The proposed order to lift the defaults against Coon and Cherep were treated as a motion to lift the defaults by Judge Ziegler, who the granted the motion and lifted the defaults the following day. The Plaintiffs, Gagliardi and Jones, were never aware that Coon and Cherep had sought the lifting of the defaults until the court had granted the relief; nobody from the judge's chambers called John Gagliardi and told him that a move was underway to lift the defaults and that he had better reply promptly. Plaintiffs in this case were never given any opportunity to reply to the request to lift the defaults.

Perhaps even more amazing is the fact that Judge Ziegler later recused himself from any further consideration of this case because of the appearance that he was biased against the plaintiff, John Gagliardi. The appearance of bias was a result of the fact that in a prior case Ziegler had attempted to prevent Gagliardi from filing any other documents in Federal Court without prior approval from him. An appeal followed and Ziegler was reversed for imposing a sanction without notice and opportunity to respond. The case was assigned to Judge Standish following the recusal of Judge Ziegler. Judge Standish refused to reinstate the defaults against Coon and

Cherep, and considered the motions to dismiss filed by the other defendants. Judge Standish dismissed certain claims from the plaintiffs' amended complaint which were determined to be primarily pendant state claims. These claims were referred to as the defamation and injunction claims. He allowed Plaintiffs an extension of time in which to file a second amended complaint, as the third claim stated in the complaint, called the padlocking claim was clearly a colorable civil rights action. Gagliardi and Jones attempted to comply with the order of Judge Standish and prepare the Second Amended Complaint. They were unable to do so, however, because the initial

padlocking incident had resulted in their being deprived of many important documents and records without which it would be difficult if not impossible to prepare a Second Amended Complaint which would be sufficiently specific to pass muster under the current requirements of the Third Circuit with respect to Civil Rights cases. Accordingly, PLaintiffs filed a request for an order to defendants that they return all documents or property of the plaintiffs in their possession as a result of the padlocking or otherwise and for an appropriate extension of time in which to prepare the Second Amended Complaint following the receipt of the seized documents. The defendants

filed an affidavit to the effect that they did not have any property of the Plaintiffs, and the Court denied the motion for return of property but gave the Plaintiffs a small extension of time in which to file a Second Amended Complaint, warning that the complaint would be dismissed if same were not filed. As a result of the refusal of the District Court to order the return of the documents, the Plaintiffs were unable to prepare the Second Amended Complaint, and the District Court then entered an order dismissing the complaint with prejudice. the Plaintiffs sought to have the District Court reverse itself, but that effort was unavailing. Judge Standish then

refused the request of the PLaintiffs that he recuse himself even though it appeared that he has an indirect interest in the defendant Duquesne Light Co, and that the law firm in which he had been a partner, Reed Smith Shaw and McClay, was frequently, and had been over a long period of time, the lead legal counsel for Duquesne Light.

Appeal was made to the United States Court of Appeals for the third Circuit, which affirmed the actions of the District Court through a rubber Stamp "Judgment Order". When the Court of Appeals affirms a lower court through a Judgment Order, there is no opinion issued concerning the

activities of the lower court. Because of the fact that the Court of Appeals generally refuses to hear oral arguments, it is suggested that the appeal as a matter of right has been done away with through the clever and insidious use of the rubber stamp judgment order. The Court of Appeals also without comment refused a request for rehearing en banc, which caused this matter to come before the Supreme Court.

ARGUMENT FOR GRANTING WRIT

1. INTEGRITY OF THE JUDICIAL SYSTEM.

If law were baseball, Plaintiffs Gagliardi and Jones would have had two

strikes against them the moment they filed their complaint, particularly in the UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA. The first strike is that they are pro se litigants. the second is that they were filing a complaint against institutions and public officials alleging violation of their civil rights. In the Western District of Pennsylvania civil rights cases of individual litigants are treated as jokes. the only civil rights cases which EVER go anywhere are those cases involving large classes of people. Pro se litigants are treated very shabbily. Plaintiff John Gagliardi was made the object of an ex parte order by Judge

Donald Ziegler (in another case) in which the Clerk was ordered not to accept any more papers for filing with the Court from Gagliardi unless he had already approved them for filing. This order was too much for the Third Circuit because Gagliardi was not given notice that such an order was even under consideration and he was not in any position to defend himself. It is certainly the law that a litigant may obtain a default against a nonresponding party as a matter of course so long as the Rules are followed, see FRCP 55. While it is also the case that the court has the authority to entertain appropriate requests to open defaults, the party

against whom such a request is made would have the right to respond. In this case, the judge's office called the parties who were defaulted and told them of the default, and invited them to appear and request that the default be lifted. The Sheriff's office was even under the impression that all it had to do was to present an order without a motion. the court construed the proposed order presented as a motion and granted it without giving the plaintiffs a chance to respond. This type of activity in the court clearly denies the Plaintiffs Due Process of law as guaranteed them by the Fifth Amendment. The circumstances of this case are particularly egregious

when one considers that the judge who invited a litigant to have his default lifted is the same judge who only two weeks later recused himself because of the plain appearance of bias on his part against the plaintiff John Gagliardi. Cases such as this cry out for corrective action.

Regardless of the merits of the particular case, the Supreme Court has the power and duty to supervise the United States Courts to see that they do justice according to law and that the confidence of the public in the fairness of the court system remains undiminished. Cases such as this lead to the accurate public perception that the courts have become the private

preserve of the rich and powerful, and the large corporations. Even though the law protects the right to the people to file cases as pro se litigants and regards pro se litigants with some extra consideration, see Haines v Kerner, 404 US 519,520 (1972), Estelle v Gamble, 429 US 97, 106 (1976), the actions of the UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA in this case are so clearly discriminatory against pro se litigants that review is necessary to uphold the integrity of the court system.

2. COMPLAINT SHOULD NOT HAVE BEEN DISMISSED

Judge Standish in this case dismissed the complaint when the plaintiffs were unable to file an amended complaint in the time which was prescribed by his order, even though the Plaintiffs had explained that they were unable to prepare a sufficiently specific pleading in this case as a result of the fact that the defendant Duquesne Light Company and its agents and servants were in actual physical possession of the records and papers which they needed to prepare that pleading. Since the judge had already agreed that the padlocking claim stated a colorable claim under the Civil Rights Statute, 42 USC 1983, the fact that the defendants were alleged to be

in possession of physical evidence and documents concerning this case should have resulted in an order for the return of the documents. these documents would certainly have been discoverable in any event, and the Plaintiffs should have been given the opportunity to file the Second Amended Complaint after the documents had been obtained. instead, Judge Standish received an affidavit from an employee at Duquesne Light stating that the defendants did not have this property of the plaintiffs and denied the relief requested based solely on that affidavit. The Court did not afford the Plaintiff a right to a hearing or even the opportunity to file a counter

affidavit. Once again, in this regard, the Plaintiffs were denied the right to Due Process of Law. The Court of Appeals, on the initial appeal, should have remanded the matter at least for a hearing on the issue of the documents of the Plaintiffs' in the possession of the defendants, but instead ducked the issue completely by the use of one of its dreaded judgment orders. The Courts have completely abandoned any interest in doing substantial justice in favor of concerns for protecting local governments and institutions against the people. It is now time for the Supreme Court to take the matter in hand and make the United States Courts once again take seriously their role as

the defenders of the rights of American Citizens against the improper encroachments of local and state governments. While this will take some courage, it will be worth it in the end.

3. DISMISSAL OF OTHER CLAIMS WAS ERROR

The District Court while allowing the plaintiffs additional time in which to file a second amended complaint dismissed the injunction and defamation counts, which were injected into the case at the time of the filing of the First Amended Complaint. This was error. The injunction and defamation complaints amounted to civil rights complaints first and pendant state

claims second therefore, the same Federal jurisdiction existed for these claims as existed for the padlocking claim, which was recognized by Judge Standish. The injunction and defamation claims stated that the defendant Duquesne Light, through its agent the defendant John Lee, deprived the Plaintiff Gagliardi of his civil rights by using the instrumentality of the Court of Common Pleas of Allegheny County to obtain an injunction against Gagliardi from exercising his rights to free speech. The injunction was obtained by the use of false and defamatory statements concerning the plaintiff. It was error for the District Court to have dismissed these

two counts, and they should have been allowed to stand.

CONCLUSION

For the reasons already stated herein, the Supreme Court must grant the writ of certiorari to the United States Court of Appeals for the third Circuit, and the judgment of the Court of Appeals must be reversed.

Dated November 19, 1989

RESPECTFULLY SUBMITTED

JOHN GAGLIARDI JULIUS JONES

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No 89-3168

JOHN GAGLIARDI and
JULIUS JONES,
APPELLANTS

vs

DUQUESNE LIGHT CO, MARTIN GOLDHABER,
EUGENE COON, ARMAND ZITELLI,
ROBERT CHEREP, STEVEN PETROSKY, and
JOHN LEE,
APPELLEES

SUR PETITION FOR REHEARING

BEFORE: GIBBONS, Chief Judge, HIGGENBOTHAM, SLOVITER, BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD, and GARTH, Circuit Judges.

The petition for rehearing filed by appellants in the above entitled case having been submitted to the

judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

S/STAPLETON, J.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No 89-3168

JOHN GAGLIARDI and
JULIUS JONES,
APPELLANTS

vs

DUQUESNE LIGHT CO, MARTIN GOLDHABER,

EUGENE COON, ARMAND ZITELLI,
ROBERT CHEREP, STEVEN PETROSKY, and
JOHN LEE,

APPELLEES

On appeal from the United States District Court for the Western District of Pennsylvania (Pittsburgh)
(D.C. Civil Action No 87-2223)
District Judge: Hon. William L. Standish

Submitted July 10, 1989

BEFORE: STAPLETON, SCIRICA, AND GARTH, Circuit Judges.

JUDGMENT ORDER

After consideration of the contentions raised by appellants, it is ORDERED AND ADJUDGED that the judgment of the district court be and hereby is affirmed. (1)

Costs taxed against appellants.

BY THE COURT

s/STAPLETON, j.

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(1). In apparent disregard of the District Court's Order of February 22, 1989, the appendix filed by the plaintiffs contained Exhibit 22, the Financial Disclosure Report to which the order of February 22, 1989 refers. Because that issue has not been presented to us, we leave the resolution of this matter to the District Court.